BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

ROBERT C. HOLT
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-101
Case No. 69-5094

S.S.A. No. ---

JOHN D. MORGAN, INC.
(Employer)

Employer Account No.

The employer appealed from Referee's Decision No. BK-22539 which held that the claimant was not disqualified for benefits under section 1256 of the Unemployment Insurance Code and that the employer's reserve account is not relieved of charges under section 1032 of the code.

STATEMENT OF FACTS

The claimant was employed by the above named employer for approximately six months at a wage of $625 per month. His normal hours and days of work were from 8 a.m. to 5 p.m., Monday through Friday.

The employer had become dissatisfied with the claimant's work performance so that on or about August 15, 1969 the claimant was notified his services would no longer be required after August 31, 1969. The claimant continued to perform services until Friday, August 29, 1969, which was the last normal workday of the month.

The employer pays its employees twice a month. It has been customary to distribute the paychecks before noon on the last working day of the pay period. In accordance with this custom, the claimant was handed his paycheck for the pay period ending August 31, 1969 at about 11:30 a.m. on Friday, August 29, 1969. The claimant left work on his lunch hour and did not return to complete the afternoon's work.

The claimant did not return to work after the lunch hour because his check said "termination" and he felt the employer did not want him "around any longer." He also stated he "just didn't want to come back and be embarrassed any more."

The Department held the claimant had been discharged and that his discharge was for reasons which did not constitute misconduct. The referee affirmed this determination and relied upon Benefit Decision No. 6804 in holding that the claimant had been discharged.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides for the disqualification of a claimant, and sections 1030 and 1032 of the code provide that an employer's reserve account may be relieved of benefit charges if it is found that the claimant was discharged for misconduct connected with his most recent work or voluntarily left his most recent work without good cause.

In applying the provisions of section 1256 of the Unemployment Insurance Code, it must first be ascertained who the moving party was in the termination of employment. If the claimant left employment while continuing work was available, then the claimant is the moving party in the termination of the employment. On the other hand, if the employer refuses to permit an individual to continue working although the individual is ready, willing and able to continue work, then the employer is the moving party in the termination of employment.

The facts in this case show that on August 15, 1969 the claimant was notified by the employer that his services would no longer be required after August 31, 1969. Had the claimant continued to perform services until 5 p.m. on August 29, the last normal workday of the pay period, there would be no question but that the termination of employment was caused by the employer's action in discharging the claimant. (Appeals Board Decision No. P-B-37) Does the fact that the claimant left work on August 29, some four hours prior to the effective hour of his discharge, cause the claimant to become the moving party in the termination of the employment relationship? In our opinion it does.

The employer expected the claimant to perform services until 5 p.m. and had paid him in advance for such services. When the claimant failed to return to work and perform these services he became the moving party in terminating the employer-employee relationship and voluntarily left his work. We cannot accept the claimant's explanation that because his check indicated he was terminated he felt the employer did not wish him to return and complete the day's services. We must, therefore, decide if the claimant's reasons for leaving work constitute good cause for doing so.

We have considered many times the concept of "good cause" within the meaning of section 1256 of the code. Bearing in mind the provisions of both sections 100 and 1256 of the code, we have determined in the past that there is good cause for the voluntary leaving of employment only in those cases where the reasons for such action are of a compelling nature.

In establishing this standard, we have held there is good cause for a voluntary leaving of work when the facts disclose a real, substantial and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action. (Appeals Board Decision No. P-B-27)

The record shows the claimant failed to return to work following his lunch hour because he did not wish to undergo any further embarrassment regarding his

impending discharge. This is not a real, substantial and compelling reason for leaving work so as to constitute good cause within the meaning of section 1256 of the code.

The reasoning expressed in Benefit Decision No. 6804 is hereby disaffirmed.

DECISION

The decision of the referee is reversed. The claimant left his most recent work without good cause within the meaning of section 1256 of the code and the employer's reserve account is relieved of benefit charges under section 1032 of the code.

Sacramento, California, February 25, 1971.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

DISSENTING - Written Opinion Attached

LOWELL NELSON

DON BLEWETT

DISSENTING OPINION

In our opinion the claimant was discharged, and the only issue for consideration should be whether that discharge was for misconduct connected with his most recent work.

In Benefit Decision No. 6804 the claimant's hours of work were from 6 a.m. to 3 p.m. On July 12, 1966 he was advised that he was to be discharged at the end of his shift on that day. After ascertaining the reasons for the discharge, he concluded he would leave work early so that he could watch the "All Star" baseball game. He left at approximately 11:30 a.m.

We discussed a number of our prior decisions involving the question of who was the moving party in the termination of employment where the claimants had left their work prior to the effective dates of their discharges. We stated:

> "In each of these cases there is one common factor. The claimants left employment prior to the effective date of termination of employment by the employer. That is, the voluntary action of the claimants supplanted the action of the employer as the proximate cause of the termination of employment.
>
> "We do not believe that is the situation in the instant case. The claimant did not leave employment prior to the effective date of his discharge but, rather, left on the effective date of his discharge. His election to discontinue working the last few hours of his shift could not, despite the shallowness of the reason, constitute an effective intervening cause sufficient to alter the character of the termination, which we conclude was a discharge."

We believe the reasoning expressed in the above cited decision is sound and is controlling in the instant case. The claimant did not leave his

employment prior to the effective date of his discharge. Rather, he left on the effective date of his discharge. His failure to work the last few hours of his shift does not constitute an effective intervening cause sufficient to alter the proximate cause of his unemployment, which we conclude was due to his having been discharged.

The evidence discloses the employer discharged the claimant because it was not satisfied with the claimant's work performance and believed he was not qualified for the job. The claimant performed his work to the best of his abilities. A discharge under these circumstances does not constitute misconduct within the meaning of section 1256 of the code.

LOWELL NELSON

DON BLEWETT